



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 11, 1998

H.R. 3246

Fairness for Small Business and Employees Act of 1998

*As ordered reported by the House Committee on Education and the Workforce
on March 11, 1998*

SUMMARY

H.R. 3246 would increase spending by the National Labor Relations Board (NLRB) by allowing private parties with 100 or fewer employees and a net worth of \$1.4 million or less to be awarded attorney's fees and expenses if they to prevail against the NLRB in administrative or judicial proceedings. The additional spending, about \$1 million in 1999, and \$5 million over the 1999-2003 period, would be subject to the annual appropriations process.

H.R. 3246 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3246 is shown in the following table.

The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

	By Fiscal Year, in Millions of Dollars					
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Spending by the NLRB Under Current Law						
Budget Authority	175	184	191	199	207	215
Estimated Outlays	175	184	191	198	206	215
With Adjustments for Inflation						
Proposed Changes						
Estimated Authorization Levels	--	1	1	1	1	1
Estimated Outlays	--	1	1	1	1	1
Spending Under H.R. 3246						
Estimated Authorization Level	175	185	192	200	208	216
Estimated Outlays	175	185	192	199	207	216
Without Adjustments for Inflation						
Spending by the NLRB Under Current Law						
Budget Authority	175	175	175	175	175	175
Estimated Outlays	175	175	175	175	175	175
Proposed Changes						
Estimated Authorization Levels	--	1	1	1	1	1
Estimated Outlays	--	1	1	1	1	1
Spending Under H.R. 3246						
Estimated Authorization Levels	175	176	176	176	176	176
Estimated Outlays	175	176	176	176	176	176
* = Less than \$500,000						
Components may not sum to totals due to rounding.						

BASIS OF ESTIMATE

Spending Subject to Appropriation

H.R. 3246 would amend the National Labor Relations Act (NLRA) in four areas. First, the bill would make it easier for employers to deny employment to applicants who are not "bona fide" employee applicants. This provision would allow employers to refuse to hire union organizers who seek jobs with the intention of organizing workers. Current law prohibits employers from discriminating against prospective employees based on their union membership status. Second, the bill would require the National Labor Relations Board to

hold hearings in some cases where employees petition for representation elections. Third, it would set time limits for the NLRB to resolve complaints, and would require the NLRB to report to Congress on cases that are pending for more than one year. Fourth, the bill would allow employers and labor organizations with fewer than 100 employees and less than \$1.4 million in net worth to be awarded attorneys fees and expenses if they prevail in an adversary adjudication or a court proceeding.

The only provision with a significant budgetary impact is that allowing certain relatively small firms and labor organizations to recover their legal expenses following favorable rulings. The increase in spending due to this change would probably be small--about \$1 million per year, on average. Under the Equal Access to Justice Act (EAJA), the payments of fees and expenses would be made from the agency's discretionary appropriations.

The bill would allow employers and labor organizations that have fewer than 100 employees and a net worth of \$1.4 million or less to be awarded attorney's fees and expenses in cases where they prevail against the NLRB, regardless of whether the position of the NLRB was substantially justified. Currently under the EAJA, a prevailing party with fewer than 500 employees and less than \$7 million in net worth may recover fees and expenses, but only if the party can prove that the position of the United States was substantially unjustified. In practice, it is very difficult for a prevailing party to prove that the U.S. government did not have substantial justification in bringing a claim forward. Since 1982, 345 parties involved in NLRB cases have filed applications under this provision. Of these applications, only 56 were granted, with total awards of approximately \$1.4 million in fees and expenses. This bill would make it easier for very small businesses to recover fees and expenses by not requiring them to prove that the U.S. government was not substantially justified.

About half of the unfair labor practice cases brought by the NLRB involve establishments with less than 100 employees. Although the NLRB does not keep data on the net worth of the business against which it brings cases, the business information services firm of Dun & Bradstreet estimates that the distribution of net worth is roughly similar to the distribution of the number of employees per establishment. For purposes of this estimate, CBO assumes that about half of the cases lost by the NLRB--or about 40 per year--involve establishments with fewer than 100 employees and a net worth of less than \$1.4 million. Assuming an average cost per case of \$25,000, enactment of H.R. 3246 would increase spending by the NLRB by about \$1 million per year.

PAY-AS-YOU-GO CONSIDERATIONS: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3246 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

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